REMARKS

Upon receipt of this response, the Examiner is respectfully requested to contact the undersigned representative of the Applicant to arrange a telephone interview concerning the inventive merits of this application.

Claim 1 is objected to for the reasons noted in the official action, specifically the appearance of the word "insert" at line 14 of claim 1 rather than the word "inserted". The above requested claim amendments are believed to overcome the raised informality in claim 1 and the Applicant accordingly respectfully requests that the Examiner reconsider and withdraw all objections to claim 1.

The Examiner states that a complete reply to the Final Rejection of January 13, 2011 should have included cancellation of claims 20-42 as being non-elected claims. In response, claims 20-42 are canceled in accordance with the Examiner's indication. Accordingly, claims 1, 3 - 11, 13 - 19 and 44 are presently pending in this application.

Claims 1, 3-10 and 44 are rejected, under 35 U.S.C. § 101, as failing to comply with the enablement requirement. More specifically, the Examiner alleges that claims 1, 3 - 10 and 44 are drawn to an apparatus attached to a human body and, as such, are drawn to non-statutory subject matter by containing positive recitations of parts of a human body. The Examiner specifically refers to the recitation in claim 1 of:

> "the pair of supply lines being connected with one another by a central bridge member having an axial length that spans no more than a width of a philtrum of the patient"

and the recitations in claim 44 of:

> "a cylindrical exterior surface of each head has a maximum outside diameter that is slightly larger than an interior diameter of a nasal cavity of the patient" and
>
> "the exterior surface of the head has a plurality elongate troughs formed therein so as to defined with a portion of inwardly facing nasal cavity skin the patient".

Claims 1, 3-10 and 44 are further rejected, under 35 U.S.C. § 112, second paragraph, as being indefinite for the reasons noted in the official action. More specifically, claims 1, 3 - 10 and 44 are rejected under 35 U.S.C. § 112, second paragraph, as containing limitations which define the dimensions of elements of the present invention, and thereby metes and bounds of the claims, in terms of parts of the human body so that the dimensions of the elements in question may not be definitely ascertained.

Although the Examiner does not identify the specification recitations and limitations in claims 1, 3 - 10 and 44 on which the rejections under 35 U.S.C. § 112, second paragraph, are based, after examination of claims 1, 3 - 10 and 44 the Applicant assumes that the Examiner is referring to the same recitations and limitations upon which the above rejections under 35 U.S.C. § 101 are based and has herein below responded accordingly.

The Applicant acknowledges and respectfully traverses both the raised 35 U.S.C. § 101 and 35 U.S.C. § 112, second paragraph, rejections in view of the following remarks.

In response to the raised rejections under 35 U.S.C. § 101 and 35 U.S.C. § 112, second paragraph, the rejected claims are accordingly amended to address and overcome the stated grounds for rejection. In particular, claims 1, 3 - 10 and 44, as amended above, do not include positive recitations of parts of a human body nor do claims 1, 3 - 10 and 44, as amended above, contain limitations which define the dimensions of elements of the present invention and thereby metes and bounds of the claims in terms of parts of the human body. It will be noted that claim 6 is canceled as that subject matter is now incorporated into independent claim 1.

It will also be noted that claim 11, which was not rejected under 35 U.S.C. § 101 or 35 U.S.C. § 112, second paragraph, on the same grounds as claims 1 and 22, contained certain recitations similar to the recitations objected to by the Examiner in claims 1 and 44. Claim 11 is amended in a manner similar to claims 1 and 44 to thereby foresee and forestall similar rejections of claim 11.

It is thereby the Applicant's belief and position that presently pending claims 1, 3 - 5, 7 - 10 and 44, as amended above, satisfy all requirements of 35 U.S.C. § 101 and 35 U.S.C. § 112, second paragraph. The Applicant accordingly requests that the Examiner reconsider and withdraw all rejections of claims 1, 3 - 10 and 44 under 35 U.S.C. § 101 and/or 35 U.S.C. § 112, second paragraph. It will also be noted that all of the above amendments to the claims are fully supported by the specification, the drawings and the claims, as originally filed, and that the above claim amendments do not add any new matter to the present invention, the specification, the drawings or the claims.

Next, claims 1, 3-16 and 18-19 are rejected, under 35 U.S.C. § 103, as being unpatentable over Payton `555 (United States Patent No. 4,660,555) in view of Kahn `807 (United States Patent No. 5,105,807) and in further new of Rittmann `521 (United States Patent No. 6,270,521). The Applicant acknowledges and respectfully traverses the raised obviousness rejection in view of the above amendments and the following remarks.

It is noted with regard to the Rittmann `521 reference that the Examiner cites a patent serial number that does not correspond to any patent issued to an inventor having the name "Rittmann". It is further noted that United States Patent No. 6,270,521 is issued to Fischell et al. for a stent delivery catheter system for primary stenting and is thus completely unrelated to nasal cannulas.

The Applicant, however, believes that the reference being referred to by the Examiner in the rejections of the claims appears to be Rittmann U.S. Patent No. 6,270,512 for an internal nasal dilator. In view of the above clarification, the following response to the raised rejection of the claims will consider the prior art reference presumably intended by the Examiner to be Rittmann `512 (United States Patent No. 6,270,512). However, should the Applicant's assumption be incorrect, the Examiner is invited to reissue the present Official Action with a proper citation of the specific reference intended by the Examiner.

Lastly, claims 17 and 44 are rejected, under 35 U.S.C. § 103, over Payton `555 in view of Kahn `807 and Rittmann `512 and further in view of Zimmerman (United States Patent No. 4,273,124). The Applicant acknowledges and respectfully traverses all of the raised obviousness rejections in view of the above amendments and the following remarks.

Turning first to Payton `555, as discussed in previous Responses, Payton `555 teaches an oxygen delivery and administration system using a single conical nosepiece and a tube holder, not a pair of supply lines which are connected together by a central bridge, as presently claimed. Payton `555 discloses a plurality of elongate troughs 45 formed in the exterior surface of the conical nosepiece – see Fig. 10 – but such elongate troughs extend to the terminal end of the cannula tubing, and each trough is positioned at an angle to the axis defined by a center of the terminal region of the cannula tubing. The elongate troughs are not formed in a cylindrical surface of the head and do not extend parallel to one another, as presently claimed.

In distinct contrast to Payton `555 and as recited in independent claims 1 and 44 – and thus in all presently pending dependent claims – and as discussed in previous Responses, each head comprises a generally cylindrical surface which is sized to be snugly received and retained within one of the nasal cavities of the patient. Further, each trough extends parallel to one another and is formed in the generally cylindrical surface of the head. Lastly, the pair of supply lines are connected with one another by a central bridge member. Payton `555 fails to in any way teach, suggest, disclose or remotely hint at either a pair of supply lines or a central bridge interconnect the pair of supply lines with one another.

In further fundamental distinction between the present invention and the teachings of Payton `555, and as also discussed in previous Responses, independent claims 1 and 44 and thus all presently pending dependent claims of this application now recite the features of "...a pair of supply lines which each have a head adjacent a leading end thereof with a discharge opening therein for discharging a respiratory gas...each head comprises a generally cylindrical surface which is sized to be snugly received and retained within one of the nasal cavities of the patient, an exterior surface of each head has a plurality elongate troughs formed therein, and each of the plurality of elongate troughs extends parallel to one another and is formed in the generally cylindrical surface of the head...and the pair of supply lines being connected with one another by a central bridge member..." Claims 7 and 10 recited additional features of the bridge which further distinguish the presently claimed invention from the applied art. Such features are believed to clearly and patentably distinguish the presently claimed invention from all of the art of record and, in particular, from Payton `555.

It is therefore the Applicant's position that the present invention as recited in independent claims 1, 11 and 44 and as thereby recited in dependent claims 3 - 5, 7 - 11, 13 - 19 and 44 by dependency therefrom, are fully and patentably distinguished over and from the teachings of Payton `555 for at least the reasons discussed above.

Turning now to the teachings of Kahn et al. `807, this reference relates to and describes a device for retaining a nasal tube in a patient's nostril. This device includes the nasal tube 5,

a support tube 1, a compressible sleeve 2 and a locking device 4. Each of the support tube 1 and the compressible sleeve 2 have a passage 14 along their length such that the nasal tube 5 can be passed therethrough into the interior of the nasal tube 5. One inserted into the nasal tube 5, the locking device 4 is adjusted so as to lock the nasal tube 5 in place with respect to the support tube 1 and the compressible sleeve 2. According to Kahn et al. `807, the compressible sleeve 2 is mounted onto the support tube 1 and the nasal tube 5 is secured into the passage through the support hub 3 so that the nasal tube 5 extends lengthwise through the support hub 3 and tube 1. The compressible sleeve 2, with the nasal tube 5 extending therethrough, is inserted into a patient's nostril and the compressible sleeve 2 is then allowed to expand to abut against the interior surface of the patient's nostril, thereby securing the nasal tube 1 and the compressible sleeve 2 in the patient's nostril.

As illustrated in Figs. 3a-3e and 4a-4g and as described in column 4, lines 16-22 and column 5, lines 29-43 of Kahn et al. `807, the nasal tube 1 has a smaller diameter than the passage 14 through the support tube 1 to thereby provide a passageway through and around the device and nasal tube 1 for draining and discharge of nasal fluids, and the compressible sleeve 2 may include a number of longitudinal passages or grooves extending either through the compressible sleeve (Fig. 4f) or on the exterior surface (Fig. 4g) of the compressible sleeve to provide a number of additional passageways for the draining and discharge of nasal fluids.

It is clear from the Figures of Kahn et al. `807 that the *each of the components of the device*, i.e., the nasal tube 5, the support tube 1, the compressible sleeve 2 and the locking device 4 *is made of a different material.* Each component has a different function and is made from a material that would be best for facilitating that function. For example, the compressible sleeve is made from a soft, sponge-like foam or rubber material such that the sleeve can be compressed and inserted into a patient's nostril after which the sleeve will re-expand and contact the inside of the patient's nostril and retain the device therein. The support tube on the other hand is made of plastic or other suitably rigid material such as ceramic, rubber or metal such that the support tube can support the locking device to rigidly retain the nasal tube in place with respect to the device.

It is therefore apparent that there are a number of fundamental distinctions between the present invention, as recited in claims 1, 11 and 44, and as thereby recited in the dependent claims. For example, the passageways in the Kahn et al. `807 device between the compressible sleeve and the support tube and through the troughs around the circumference of the compressible sleeve may appear to have some relationship to the leakage passages formed around each cannula head according to the present invention, as recited in claims 1, 11 and 44. This, however, is a misleading resemblance as the purpose and functions of the passageways in the Kahn et al. `807 device are fundamentally different from those of the present invention and these differences are reflected in the structures of the cannula heads, as presently claimed, when compared to the Kahn et al. `807 reference.

That is, and as recited in claims 1, 11 and 44 and thus in the dependent claims, and as described in the present application, the purpose and function of the troughs in the exterior surfaces of the cannula heads in the present invention are to facilitate exhausting of excess respiratory gas from the patient's respiratory system while still maintaining a positive pressure within a respiratory passage of the patient, at least during exhalation by the patient, so as to maintain the patient's respiratory passages in an inflated substantially "open" state. In complete and fundamental contrast to the present invention, however, and as described by Kahn et al. `807 at, for example, column 4, lines 20-25 and 28-42, the disclosed purpose of the passageways through and around the compressible sleeve is to provide a means for draining and discharging nasal fluids and gastric fluids from the nasal passages of the patient and, as described for example, at column 6, line 65 to column 7, line 3, to provide a passageway of sufficient size to allow normal air movement and breathing by the patient and to prevent the device from being dislodged from the patient's nostril by, for example, normal breathing, coughing, sneezing, and so on by the patient.

It is therefore apparent that the Kahn et al. `807 device does not, and cannot, perform at least one of the primary functions of the cannula and cannula assembly according to the present invention which, as recited in claims 1, 11 and 44 and as thereby recited in the dependent claims, is to maintain a positive pressure within a respiratory passage of the patient at least during exhalation by the patient so as to maintain the patient's respiratory passages in an inflated and open state. It is quite clear that in the Kahn et al. `807 device, and because the passageways through and around the compressible sleeve are specifically required to be of a size to allow free breathing and air movement and to prevent a positive pressure in the patient's nostril, whether from normal breathing or from coughing or sneezing, from dislodging the nasal tube, the Kahn et al. `807 device thus fails to in any way teach, suggest, disclose or remotely hint at the functions of the nasal cannula and cannula assembly of the present invention and that, in fact and in at least this regard, it is respectfully submitted that Kahn et al. `807 effectively teaches directly away from the presently claimed invention.

It must also be noted that the Kahn et al. `807 device is further fundamentally distinguished from the present invention because the nasal cannula and cannula assembly of the present invention, as recited in the claims, are designed and structured to supply only gases to the patient's respiratory system. In complete contrast, Kahn et al. `807's device is designed to delivery both gases and fluids, such as gastric system fluids, to the patient, and this fundamental distinction is reflected in the structures and features of the two devices.

In further distinction between the present invention as recited in the claims and the teachings of Kahn et al. `807, it must be noted that the compressible sleeve of the Kahn et al. `807 device is formed from a compressible material that is compressed in order to insert the device into a patient's nose and then released so as to allow expansion thereof and secure the device in the patient's nose. As discussed above, the nasal heads of the present invention comprise a material that is at most slightly compressible, so that the cannula and cannula

assembly of the present invention does not necessarily rely upon a change in dimension of the cannula heads to secure the cannula heads in the patient's nostrils, thereby allowing the dimension of the leakage passages in the outer surface of the cannula heads to be sufficiently controlled to achieve the desired object. That is, to allow the leakage of excess gas while still maintaining a positive pressure in the patient's respiratory system. According to the Kahn et al. `807 device, however, and because the Kahn et al. `807 device relies on a change in the dimension of the compressible sleeve to secure the device in the patient's nostril, it is respectfully submitted that the dimensions of the longitudinal grooves in the compressible sleeve thus cannot be adequately controlled to a sufficient degree to provide the functions of the present invention, that is, to allow the exhaust of excess gas while maintaining a positive pressure in the patient's respiratory system.

In still further distinction between the present invention as recited in the claims and the teachings of Kahn et al. `807, it must be noted that, as described herein above as recited in claims 1 and 11 and as thereby recited in the dependent claims, the cannula and cannula assembly of the present invention is provided with two gas supply lines, each of which is provided with a cannula head, so that the cannula and cannula assembly of the present invention can concurrently provide gas to both of the patient's nostrils. In complete contrast from the cannula and cannula assembly of the present invention, however, not only does Kahn et al. `807 describe its device as only having a single gas or liquid supply tube connected to a single device inserted into only one of the patient's nostrils, but it is apparent from the illustrations of the Kahn et al. `807 device that the size and configuration of the hub and support tube assembly would generally avoid or prevent the use a supply line to each of the patient's nostrils, that is, would prevent the system from using two supply lines concurrently with one another.

Finally, the claims of the application recite that *the heads are formed from the same material as the pair of supply lines.* This feature of the claims is in direct contrast to the teachings of Kahn et al. `807 which describe the sleeves as being made of a compressible foam or sponge-like material while the nasal tubing is some other material.

It is therefore apparent that for at least the reasons discussed above, Kahn et al. `807 fails to in any way teach, suggest, disclose or remotely hint at the presently claimed invention, as recited in claims 1, 11 and 44 and as thereby recited in the dependent claims, to those of ordinary skill in the arts under the requirements and provisions of 35 U.S.C. 103 and, in fact, teaches directly away from the present invention as recited in the claims.

Next considering Rittmann `512, as discussed herein above the reference cited by the Examiner in the rejections of the claims under 35 U.S.C. 103 appears to be incorrectly identified as Rittmann United States Patent No. 6,270,521 and the intended prior art reference appears to be Rittmann United States Patent No. 6,270,512 for an internal nasal dilator. As stated herein above, the presence response to the Examiner's rejections of the claims will thereby consider the prior art reference presumably intended by the Examiner, namely, Rittmann `512

United States Patent No. 6,270,512. Should the Applicant's assumption be incorrect, the Examiner is invited to reissue the present Official Action with a citation of the specific reference intended by the Examiner.

Turning now and considering the teachings of Rittmann `512, the reference relates to and describes a device for dilating, or spreading open, the nasal passages of a patient. In brief, the Rittmann `512 nasal dilator comprises a generally U-shaped wire structure with each upright arm of the structure comprising a generally U-shaped resilient structure shaped to engage with the structure of the patient's nasal passages and to exert an outward pressure on the outer side of each nasal passage to force the nasal passages into an open state.

It is therefore apparent that there is no relationship between the Rittmann `512 device and the nasal cannula of the present invention, that the Rittmann `512 device has no relevance to the nasal cannula of the present invention, and that the present invention is completely and fundamentally distinguished over and from the Rittmann `512 device by a number of significant and fundamental features.

For example, *the Rittmann `512 device is not a cannula for providing a flow of gas to the nasal passages of a patient*, and cannot in any way perform the functions of a nasal cannula. For this reason, the entire structure of the nasal cannula of the present invention and each element thereof is completely and fundamentally different from the elements of the Rittmann `512 device.

For example, the Rittmann `512 device does not have and does not show or even suggest a nasal cannula having:

(1) a pair of supply lines wherein each supply line has a head adjacent a leading end thereof with a discharge opening therein for discharging a respiratory gas into a nasal passages of a patient,

(2) the pair of supply lines are connected with one another by a central bridge member,

(3) each head is formed integrally with and from the same material as the pair of supply line and each head comprises a generally cylindrical surface which is sized to be snugly received and retained within one of the nasal cavities of the patient, or

(4) an exterior surface of each head has a plurality elongate troughs formed therein, and each of the plurality of elongate troughs extends parallel to one another and is formed in the generally cylindrical surface of the head,

(5) each of the plurality elongate troughs is formed by a pair of adjacent planar side surfaces which diverge away from a common elongate valley toward a pair of spaced apart but adjacent elongate ridges having maximum outside diameters coequal with the maximum outside diameter of each head to partially define one of the plurality of leakage passages,

(6) the plurality elongate troughs form, once inserted into the respective nasal cavity, a plurality of leakage passages, to facilitate exhausting of excess respiratory gas supplied to the patient through the leakage passage while maintaining a positive pressure within a respiratory passage of the patient at least during exhalation by the patient,

as required by the recitations and limitations of independent claims 1, 11 and 44 and as thereby required by each of the dependent claims.

It is therefore apparent that for at least the reasons discussed above, Rittmann `512 fails to in any way teach, suggest, disclose or remotely hint at the presently claimed invention, as recited in claims 1, 11 and 44 and as thereby recited in the dependent claims, to those of ordinary skill in the arts under the requirements and provisions of 35 U.S.C. 103 and, in fact, teaches directly away from the present invention as recited in the claims.

Lastly turning now to and considering the combination of Payton `555 in view of Kahn `807 and in further new of Rittmann `512, it is apparent from the above discussions that neither Payton `555, nor Kahn `807 nor Rittmann `512, either taken individually or in any permissible combination, in any way teach, suggest, disclosure or remotely hint at a nasal cannula having:

(1) a pair of supply lines wherein each supply line has a head adjacent a leading end thereof with a discharge opening therein for discharging a respiratory gas into a nasal passages of a patient,

(2) the pair of supply lines are connected with one another by a central bridge member,

(3) each head is formed integrally with and from the same material as the pair of supply line and wherein each head comprises a generally cylindrical surface which is sized to be snugly received and retained within one of the nasal cavities of the patient, or

(4) an exterior surface of each head has a plurality elongate troughs formed therein, and each of the plurality of elongate troughs extends parallel to one another and is formed in the generally cylindrical surface of the head,

(5) each of the plurality elongate troughs is formed by a pair of adjacent planar side surfaces which diverge away from a common elongate valley toward a pair of spaced apart but adjacent elongate ridges having maximum outside diameters coequal with the maximum outside diameter of each head to partially define one of the plurality of leakage passages,

(6) the plurality elongate troughs form, once inserted into the respective nasal cavity, a plurality of leakage passages, to facilitate exhausting of excess respiratory gas supplied to the patient through the leakage passage while maintaining a positive pressure within a respiratory passage of the patient at least during exhalation by the patient,

or any of the individual elements of these recitations, which appear in each of independent claims 1, 11 and 44 and which are thereby incorporated in each of the dependent claims, under the requirements and provisions of 35 U.S.C. 103. It is therefore apparent from the above discussions that there is no permissible combination of the teachings of Payton `555, Kahn `807 and/or Rittmann `512, however taken individually or in combination with one another, that does, or can, teach, suggest or disclose each and every one of the elements and limitations of the present invention as recited in independent claims 1, 11 and 44 and as thereby recited in each of the dependent claims by dependency therefrom. It is therefore apparent that for at least the reasons discussed above, any permissible combinations of the teachings of Payton `555, Kahn `807 and Rittmann `512 fail to in any way teach, suggest, disclose or remotely hint

at the presently claimed invention, as recited in claims 1, 11 and 44 and as thereby recited in the dependent claims, to those of ordinary skill in the arts under the requirements and provisions of 35 U.S.C. 103 and, in fact, teaches directly away from the present invention as recited in the claims. The Applicant therefore respectfully requests that the Examiner reconsider and withdraw all rejections of claims 1, 3 - 5, 7 - 11, 13 - 19 and 44, under 35 U.S.C. 103, over Payton `555, Kahn `807 and Rittmann `512, taken individually or in any combination, and allow claims 1, 3 - 5, 7 - 11, 13 - 19 and 44 as presented herein above.

Next considering the rejection of claims 17 and 44 under 35 U.S.C. § 103 over Payton `555 in view of Kahn `807 and Rittmann `512 and further in view of Zimmerman `124, it has been shown herein above that claim 17, which depends from and incorporates all elements and limitations of independent claim 11, is for at least that reason fully and patentably distinguished over and from the teachings of Payton `555, Kahn `807 and Rittmann `512, taken individually or in any combination, as is claim 44, so that the only reference remaining issue to be considered with respect to claims 17 and 44 is the Zimmerman `124 reference.

Turning now to Zimmerman `124, this reference relates to and describes a nasal cannula comprised of a single generally ball-shaped resilient bulbous member connected from the mid-point of a loop of tubing forming a single gas supply line. The bulbous member has a passage therethrough from the gas supply line and is inserted into one of a patient's nasal passages to provide a flow of gas to the patient, with the exhausted/exhaled gas being vented through the other of the patient's nasal passages.

It is therefore apparent that the present invention, as recited in claims 1, 11 and 44 and as thereby recited in claim 17 which is dependent from claim 11, is fully and patentably distinguished over and from the teachings of Zimmerman `124, under 35 U.S.C. 103, for a number of fundamental reasons.

For example, the Zimmerman `124 device does not have and does not show or even suggest a nasal cannula having:

(1) a pair of supply lines wherein each supply line has a head adjacent a leading end thereof with a discharge opening therein for discharging a respiratory gas into a nasal passage of a patient,

(2) the pair of supply lines are connected with one another by a central bridge member,

(3) each head is formed integrally with and from the same material as the pair of supply line and wherein each head comprises a generally cylindrical surface which is sized to be snugly received and retained within one of the nasal cavities of the patient,

(4) an exterior surface of each head has a plurality elongate troughs formed therein, and each of the plurality of elongate troughs extends parallel to one another and is formed in the generally cylindrical surface of the head,

(5) each of the plurality elongate troughs is formed by a pair of adjacent planar side surfaces which diverge away from a common elongate valley toward a pair of spaced apart but

adjacent elongate ridges having maximum outside diameters coequal with the maximum outside diameter of each head to partially define one of the plurality of leakage passages, or

(6) the plurality elongate troughs form, once inserted into the respective nasal cavity, a plurality of leakage passages, to facilitate exhausting of excess respiratory gas supplied to the patient through the leakage passage while maintaining a positive pressure within a respiratory passage of the patient at least during exhalation by the patient

as required by the recitations and limitations of independent claims 1, 11 and 44 and as thereby required by each of the dependent claims, including claim 17.

It is therefore apparent from the above discussions that there is no combination of the teachings of Payton `555, Kahn `807, Rittmann `512 and/or Zimmerman `124, however taken individually or in any permissible combination, does or can teach, suggest or disclose all of the elements and limitations of the present invention, as recited in independent claims 1, 11 and 44 or in any of the dependent claims, including claim 17. It is therefore apparent that for at least the reasons discussed above, all permissible combinations of the teachings of Payton `555, Kahn `807, Rittmann `512 and/or Zimmerman `124 fail to in any way teach, suggest, disclose or remotely hint at the presently claimed invention, as recited in claims 1, 11 and 44 and as thereby recited in the dependent claims, including claim 17, to those of ordinary skill in the arts under the requirements and provisions of 35 U.S.C. 103 and, in fact, teaches directly away from the present invention as recited in the claims. The Applicant therefore respectfully requests that the Examiner reconsider and withdraw all rejections of claims 1, 3 - 5, 7 - 11, 13 - 19 and 44, under 35 U.S.C. 103, over Payton `555, Kahn `807, Rittmann `512 and/or Zimmerman `124, taken individually or in any permissible combination, and allow claims 1, 3 - 5, 7 - 11, 13 - 19 and 44 as presented herein above.

Lastly, the Applicant reviewed the presently pending claims and noted that the present invention includes features and elements not recited in the presently pending claims and has accordingly amended claim 44 to recited these additional elements and features to thereby provide the present invention and scope of protection deserved by the present invention. In particular, claim 44 is amended to include recitations and limitations directed to an arrangement of gas supply arms of the cannula, the gas supply lines and the general planes and contours of a patient's facial areas. It will be noted that these amendments to claim 44 are fully supported by the specification, the drawings and the claims of the present application as originally filed, such as at paragraphs [136] - [144] thereof and in the corresponding drawings, and thus do not add any new matter to the invention, the specification, the drawings or the claims.

It is the Applicant's belief and position that neither Payton `555, nor Kahn `807, nor Rittmann `512 nor Zimmerman `124, nor any permissibly combination thereof, does or can in any way teach, suggest, disclose or remotely hint at the presently claimed invention, as recited in claim 44 and as discussed just above. The Applicant therefore respectfully requests the that the Examiner reconsider and withdraw all rejections of claim 44, under 35 U.S.C. 103, over

Payton `555, Kahn `807, Rittmann `512 and Zimmerman `124, taken individually or in any permissible combination, and allow claim 44 as presented herein above.

In the event that any further amendment to any of the claims of this application is believed or deemed necessary, then the Examiner is invited to contact the undersigned representative of the Applicant in order to discuss further amendment of the above identified application.

In view of the above amendments and remarks, it is respectfully submitted that all of the raised rejection(s) should be withdrawn at this time. If the Examiner disagrees with the Applicant's view concerning the withdrawal of the outstanding rejection(s) or applicability of the Payton `555, Kahn `807, Rittmann `512 and/or Zimmerman `124 references, the Applicant respectfully requests the Examiner to indicate the specific passage or passages, or the drawing or drawings, which contain the necessary teaching, suggestion and/or disclosure required by case law. As such teaching, suggestion and/or disclosure is not present in the applied references, the raised rejection should be withdrawn at this time. Alternatively, if the Examiner is relying on his/her expertise in this field, the Applicant respectfully requests the Examiner to enter an affidavit substantiating the Examiner's position so that suitable contradictory evidence can be entered in this case by the Applicant.

In view of the foregoing, it is respectfully submitted that the raised rejection(s) should be withdrawn and this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

The Applicant respectfully requests that any outstanding objection(s) or requirement(s), as to the form of this application, be held in abeyance until allowable subject matter is indicated for this case.

In the event that there are any fee deficiencies or additional fees are payable, please charge the same or credit any overpayment to our Deposit Account (Account No. 04-0213).

Respectfully submitted,

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